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In the

Supreme Court of the United States

OCTOBER TERM, 1951

No. 127

E. C. BAGSBY, EUGENE ROBINSON AND EDWARD RADFORD,
Petitioners,

v.

TRUSTEES OF PLEASANT GROVE INDEPENDENT SCHOOL DISTRICT,
Respondent.

PETITION FOR WRIT OF CERTIORARI AND SUPPORTING BRIEF TO THE COURT OF CIVIL APPEALS FOR THE SEVENTH SUPREME JUDICIAL DISTRICT OF TEXAS, AT AMARILLO, TEXAS.

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TRUSTEES OF PLEASANT GROVE INDEPENDENT SCHOOL DISTRICT,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS, SEVENTH SUPREME JUDICIAL DISTRICT OF TEXAS

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners respectfully pray that a Writ of Certiorari issue to review the judgment of the Court of Civil Appeals, Seventh Supreme Judicial District of Texas, rendered and entered on the 11th day of December, 1950. (R. 72.)

PART ONE

SUMMARY STATEMENT OF THE MATTER INVOLVED

I

Petitioners respectfully show that this case is believed to present in this Court, a record, in which the question,

alleging that the constitutional and statuary provisions of the State of Texas, requiring equal protection of law and equal opportunities for all qualified persons under the separate school system, has been violated; and, that the failure and refusal of the Trustees to provide equal educational facilities within the District for both races, white and negro, constitutes a denial of rights under the Fourteenth Amendment of the Constitution of the United States.

Hearing on the Merits

On January 10, 1950, Petitioners filed suit in the 95th District Court of Dallas County, Texas, against the Trustees of Pleasant Grove Independent School District of Dallas County, Texas, praying for a Writ of Mandamus to compel the said Trustees to provide a school within the said Pleasant Grove Independent School District for the education of Negro Children residing within the district. (R. 3-11.)

The cause was tried without a jury and the Court entered judgment, that a writ of mandamus issue, directing and commanding the District Trustees of Pleasant Grove Independent School District to provide and maintain a school for the education of negro children; and to provide and maintain within the said district, educational opportunities and facilities for the education of negro children equal to those now being provided for white children. (R. 15.) The said Trustees appealed from said judgment rendered by the trial Court, to the Court of Civil Appeals, in and for the 5th Supreme Judicial District, of Texas

(R. 72-83); and said cause was transferred to the Court of Civil Appeals, for the Seventh Supreme Judicial District of Texas. (R. 98.)

The Court of Civil Appeals, in and for the Seventh Supreme Judicial District of Texas, on appeal, reversed the judgment of the District Court, holding in substance that the failure and refusal of the said Trustees to provide equal or substantially equal facilities for the education of negro children within the school District was not in violation of constitutional and statuary provisions of the state of Texas, requiring equal educational facilities and opportunities for both races, white and colored, alike; and that such act of the said Trustees was not a denial of equal protection of laws, under the 14th Amendment, Constitution of the United States. (R. 72.)

Petitioners filed motion for rehearing on December 26, 1950 (R. 84) which was denied January 2, 1951.

On the 21st day of March, 1951, petitioners application for writ of error to the Supreme Court of Texas was denied, without opinion (R. 92) and the said judgment of the Court of Civil Appeals became and is the final judgment of the highest Court in said State of Texas, to which petitioners can appeal.

II

Summary of Testimony

The evidence showed, uncontradicted, that for several years prior to the filing of this suit, the Trustees of Pleasant Grove Independent School District maintained an ele-

mentary school for negroes within the said Pleasant Grove Independent School District, known as the Kirby School, in which 8 grades were maintained for the education of negro children. In May, 1948, this school was reduced to a two grade school, in which only the first and second grades were taught.

In May, 1949, the Kirby School was abolished. That at the time there were 117 negro children of scholastic age residing within the school district. That there are no educational facilities what ever, now being provided within the Pleasant Grove Independent School District for the education of negro children.

The testimony further shows that for many years, the said Trustees have provided and maintained, within the said school district, a high school and elementary school for the education of white children, and adequate buildings and grounds, with a staff of 72 teachers are so maintained. At no time during the existance of the Kirby School for negroes, was more than one (1) teacher provided for the education of negro children and its physical plant was inadequate.

That the educational facilities for white children have been steadily improved within the school district. That the said Trustees have made additional improvements to the facilities for the education of white children within the school district and have erected numerous buildings since 1946. These improvements were made by the issuance of school bonds, as follows:

In 1946, bonds issued $200,000.00; In 1947, $85,000.00; In 1949, $325,000.00; a total of $610,000.00. All of which was spent for the improvement of schools for white children and none for the improvement of the school for negroes; and the Trustees testified that they do not intend to spend any of the money still on hand for the acquisition of land or to construct any facilities for negro children. (R. 17-20.)

That school taxes were levied by the Trustees upon all of the property owners alike, both white and negro, residing within the district, for the retirement of said bonds; and petitioners paid such taxes and received no benefit therefrom.

That the negro children residing within the said district, are required to attend the Wheatly School, located in the Dallas Independent School District, and must travel 3½ miles to reach school over U. S. Highway #175. The highway is dangerous and has many hazards, and is subject to overflow, and is impassible during flood season and heavy rains. They are transported by bus, provided by the Trustees, and are not permitted to attend the schools within the district which are attended by white children. (R. 17-20.)

PART TWO

Opinion of the Court Below

Upon the trial of the case upon its merits, the District Court rendered judgment for petitioners, holding that the

acts of the said District Trustees are in violation of the Constitution of the United States, the Constitution of Texas, and the laws governing public education in the State of Texas; and are a denial of the rights of negro children to equal educational opportunities and facilities within the said District. (R. 16.)

On appeal, the Court of Civil Appeals, reversed the judgment of the trial Court, saying:

> "A careful consideration of the record and the contentions urged by the respective parties convinces us that the things done by Appellants of which appellees complain constitute nothing more than the exercise of the discretion committed to them by the law and that they exercised such discretion according to their judgment of what was best for the school children involved. We are convinced further that there was no evidence of prejudice against appellees, or the negro children, shown by the testimony and that appellants acted well within their legal authority in making the agreement with the Dallas School District of which Appellees complain. In our opinion the Court below therefore erred in interferring with appellants in the exercise of their sound discretion by granting the mandamus prayed for by appellees." (R. 82.)

PART THREE

Jurisdiction

Jurisdiction of this Honorable Court is invoked under Title 28, United States Code, Section 1257, this being a case involving rights secured under the Fourteenth Amendment. Petitioners' cause is founded upon rights secured by the Constitution of the United States.

PART FOUR

Questions Presented

I

Are the District Trustees of Pleasant Grove Independent School District bound, under the requirements of the Fourteenth Amendment, U. S. Constitution, to provide within the district proper school facilities, training and instruction for resident negro scholastics of said district, substantially equal to such facilities and instruction that is provided for white scholastics.

II

Whether the act of levying school taxes by the District Trustees of Pleasant Grove Independent School District upon all property owners alike, both white and colored, residing within the District, for the retirement of school bonds; and the expenditure of money derived from said school bonds for the exclusive use and benefit of the construction and improvement of white schools is in violation of the Fourteenth Amendment, U. S. Constitution, and abridges the privileges of a certain class of citizens and denies them equal protection of laws.

PART FIVE

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT

I

The Court of Civil Appeals in reversing the judgment of the District Court, while pretending to observe the requirements of equal protection of the laws in the matter

of public schools, approved the denial of rights of negro children to receive equal educational facilities and instruction within the district where they reside. The extent of this practice and its detrimental effect on the community are of such nature as to warrant consideration by this Court.

II.

The laws of Texas, particularly the constitutional commands of impartial provision in public education for white and negro scholastics alike (Article 7, Section 7, Constitution of Texas), together with the statutes providing expressly that any scholastic shall be admitted to the public schools and like provision shall be made for both races, white and colored, entitle the negro plaintiffs, parents and scholastics to a school being held in his district, and they cannot be forced to accept a substitute for a local school, more particularly so under the Fourteenth Amendment, U. S. Constitution, when the discrimination between the scholastics provided with the local school and the scholastics denied a local school is on the classification of color.

This Court should review and reverse the judgment of the Court of Civil Appeals, and affirm the judgment of the trial Court, which relied upon the decision of this Honorable Court in *Gaines v. State of Missouri*, because the questions of law involved in the instant case are identical.

Conclusion

WHEREFORE, it is respectfully submitted that this petition for writ of certiorari to review the judgment of the Court below (Court of Civil Appeals) should be granted, and that upon such review, said decision be reversed and that petitioners have such other relief as may be deemed proper.

Respectfully submitted,

R. L. H. RICE,
Attorney for Petitioners.

C. B. BUNKLEY, JR.,
U. S. TATE,
Of Counsel.

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v.

TRUSTEES OF PLEASANT GROVE INDEPENDENT SCHOOL DISTRICT,
Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS SEVENTH SUPREME JUDICIAL DISTRICT OF TEXAS

OPINION OF THE COURT BELOW

The opinion of the Court of Civil Appeals can be found on pages 72-83, this record, and that of the District Court of Dallas County, Texas is reported at pages 15-17.

Jurisdiction

The Jurisdiction of this Court rests upon Title 28, United States Code, Section 1257. The District Court of Dallas County entered judgment for petitioners (R. 15) March 4, 1950. Judgment was reversed by Court of Civil Appeals, December 11, 1950. (R. 72.) Application for writ

of error was refused by the Supreme Court of Texas, March 21, 1951. (R. 92.)

Statement of the Case

Pertinent facts involved in this case are set out in the petition itself, and therefore, are not restated here.

ERRORS RELIED UPON

The Court of Civil Appeals erred in holding that the failure and refusal of the Trustees to provide, within the school district, educational facilities and instruction for negro children, equal or substantially equal to those being provided for white children; and their failure and refusal to make impartial provision alike for both races, is not in violation of the Fourteenth Amendment, U. S. Constitution.

The Court of Civil Appeals erred in holding that the levying of school taxes upon all property owners alike, both white and negro, residing within the district, for the retirement of school bonds, and the expenditures of money derived from said bonds exclusively for the construction and improvement of white schools, is not in violation of the Fourteenth Amendment, and does not abridge the privileges of a certain class of citizens and deny to them equal protection of laws.

ARGUMENT

I.

ARE THE DISTRICT TRUSTEES OF PLEASANT GROVE INDEPENDENT SCHOOL DISTRICT BOUND,

UNDER THE REQUIREMENTS OF THE FOURTEENTH AMENDMENT, U. S. CONSTITUTION, TO PROVIDE WITHIN THE DISTRICT PROPER SCHOOL FACILITIES, TRAINING AND INSTRUCTION FOR RESIDENT NEGRO SCHOLASTICS OF SAID DISTRICT, SUBSTANTIALLY EQUAL TO SUCH FACILITIES AND INSTRUCTION THAT IS PROVIDED FOR WHITE SCHOLASTICS.

In the trial Court, it was the contention of petitioners that the closing of the negro school and the arbitrary transfer of the negro scholastics to another school, which is outside of their home district, was contrary to the laws of Texas and the Fourteenth Amendment, U. S. Constitution. (R. 3-10.)

The trial Court agreed with petitioners and found as a conclusion of law, that since the negro children residing within the Pleasant Grove school district are not permitted, under the segregation laws, to attend the same school as white children, the Trustees of the said district are bound to provide seperate schools for negro scholastics, substantially equal to the schools provided for white children, and must make impartial provision for the education of both white and negro children in separate schools. (R. 19.)

The trial Court further held that the failure of the Trustees to provide any facilities whatever for the education of negro scholastics within the district where they reside was in violation of Article 7, Section 7, Constitution of Texas, and the 14th Amendment, U. S. Constitution, in that the failure and refusal of the said Trustees denies to

negro children equal protection of laws and does not constitute impartial provision for negro children and white children. (R. 20-21.)

Article 7, Section 7, Constitution of Texas, provides as follows:

> "Seperate schools shall be provided for white and colored children, and impartial provision shall be made for both * * *."

Article 2900, Revised Statues of Texas, provides as follows:

> "All available public school funds of this state shall be apportioned in each county for the education alike of white and colored children, and impartial provision shall be made for both races * * *."

Article 2901, Revised Statues of Texas, provides as follows:

> "Every child in this state of scholastic age shall be permitted to attend the public free schools of the district or independent district, in which it resides * * *."

The Court of Civil Appeals, in reversing the judgment of the District Court (trial Court) relied upon the act of the 45th Legislature, in 1937, enacted Senate Bill 185, Chapter 474, Acts 45th Legislature, page 1259, titled, "Rural Aid and Equalization Fund Appropriation."

Section 17, which reads as follows:

> "On agreement of the board of Trustees of the districts concerned or on petition signed by a majority of the qualified voters of the district and subject to the approval of the County Superintendent and the State

> Superintendent, the Trustees of a district which may be unable to maintain a satisfactory school may transfer its entire scholastic enrollment, or any number of grades thereof, to a convenient school of higher rank, and in such event, all of the funds of the district, including the State aid to which the district would otherwise be entitled under the provisions of this Act, or such proportionate part thereof as may be necessary, may be used in carrying out said agreement * * *."

Petitioners show that the above statue was held to be unconstitutional, in the case *Robinson Springs School District Trustees v. McCorkel, 101 S. W. 2d, 876, 877*, the Court saying:

> "The statue * * * 'does not purport to authorize the Trustees of one district to enter into contracts with the Trustees of another district, but simply provides that the Trustees of the district to which the transfer is made shall agree to accept the transfer * * *. Futhermore, * * *' it is believed to be contrary to elementary principles of our system of government, that the rights of citizens shall be made to depend upon the secret undisclosed will or purpose of any governmental agency or agent."

The above statue was amended under the new Foundation School program of Texas, known as the Gilmer Aiken Bill, which became effective in June, 1949, and provides for transfer by contract for one year, under Article 2922-13.

> "* * * Provided further, that any school district which is not a dormant school district * * * subject to the approval of the Board of Trustees of the districts concerned, the County Superintendent and the State Commissioner of Education, may contract for a

> period of one year to transfer its *entire* scholastic enrollment, *both white and colored*, to a contiguous district."

Under the prevailing laws of Texas the transfer of scholastics from one school district to another can be made only under the transfer statues of the State of Texas. *Love v. City of Dallas, 40 S. W. 2d 20*, Chief Justice Cureton, speaking for the Supreme Court of Texas said:

> "It is clear, we think, from a consideration of the various transfer statues * * * that scholastics cannot be transferred under any circumstances from the districts in which they reside to another district, except under the transfer statue."

(The transfer statues are set out in the appendix, page 21-22.)

It is noted and urged that the provisions of the transfer statues are not applicable to the instant case and therefore, the holding of the Court of Civil Appeals should be held void and without merit.

Petitioners respectfully show that the trial Court, in rendering judgment for petitioners herein, relied upon the rulings of this Honorable Court, which has consistently concluded that the Fourteenth Amendment prohibits the states and all other governmental agencies from making racial differences and other arbitrary distinctions, the basis for general classification. This Honorable Court has spoken many times on the "seperate but equal doctrine"

under the Fourteenth Amendment. In *Gaines v. State of Missouri, 305 U. S. 337*, which we believe to be similar, and which presented questions of law identical with the instant case, said:

> "The admissibility of laws separating the races in the enjoyment of privileges afforded by the state rests *wholly upon the Quality of the privileges which the law gives to the separate groups within the state* * * *. The basic consideration is not as to what sort of opportunities other states provide, or whether they are as good as those in Missouri, *but as to what opportunities Missouri itself* furnishes to white students and *denies to negro students* solely upon the ground of color * * *."
>
> "* * * A state which excludes from a state maintained school, open to white students, cannot be said not to have discriminated against negroes in violation of the equal protection clause of the Fourteenth Amendment, because it has made provision by the statue for the payment of tuition at the state university of any adjacent state, for any negro resident of the state, in any course of study provided at the state university for white students, * * * irrespective of the facts that the instruction obtainable outside of the state is equal to that obtainable in the state university, that the difference in distance to be traveled affords no substantial ground of complaint, that there is but a limited demand * * * or that the provision for tuition outside of the state is operative only until such time as the curators of the university for negroes may exercise their discretionary power to establish a * * * school."

Other cases which we believe restate this principle are:

Yick Wo v. Hopkins, 118 U. S. 356, 373, 374;
McCabe v. Atchison T. & S. F. Ry. Co. 235 U. S. 151;

Mitchell v. U. S. 313 U. S. 80;
Alston v. School Board of City of Norfork, 112 F. 2d 992;
Sipuel v. Board of Regents, 332 U. S. 631;
Mendez v. Westminister School District, 64 Fed. Supp. 544, affirmed 161 Fed. 2d. 774;
Corbin v. School Board of Pulaski County, Va., 177 Fed. 2d 924;
Carter v. School Board of Arlington County, Va., 182 Fed. 2d 531.

In consideration of the fact that the constitutional and statuary provisions of the state of Texas, provide for seperate schools for white and negro scholastics, in the matter of public education, there could be little doubt that the "seperate but equal doctrine" under the Fourteenth Amendment, as proclaimed by this Honorable Court, should apply to the instant case; and that the judgment of the trial Court should be affirmed.

II.

WHETHER THE ACT OF LEVYING SCHOOL TAXES BY THE DISTRICT TRUSTEES OF PLEASANT GROVE INDEPENDENT SCHOOL DISTRICT UPON ALL PROPERTY OWNERS ALIKE, BOTH WHITE AND COLORED, RESIDING WITHIN THE DISTRICT, FOR THE RETIREMENT OF SCHOOL BONDS, AND THE EXPENDITURE OF MONEY DERIVED FROM SAID SCHOOL BONDS FOR THE EXCLUSIVE USE AND BENEFIT OF THE CONSTRUCTION AND IM-

PROVEMENT OF WHITE SCHOOLS IS IN VIOLATION OF THE FOURTEENTH AMENDMENT, U. S. CONSTITUTION, AND ABRIDGES THE PRIVILEGES OF A CERTAIN CLASS OF CITIZENS AND DENIES THEM EQUAL PROTECTION OF LAWS.

The trial Court, in rendering judgment for petitioner's said:

> "The levying of taxes against the negro plaintiffs to pay for bonds for the purchase of land and construction of facilities for white children alone, without any provision whatever being made for the expenditure of any of said money for the purchase of land and the construction of educational facilities for negro children, contravenes the United States Constitution, Amendment XIV, Section I, because it abridges the privileges of a certain class of citizens, denies them equal protection of the laws, and levies a tax upon them without permitting them to participate in the benefits derived from the expenditure of their taxes."

This ruling has been proclaimed many times. In the case, *Corn v. Alden Coal Co., 251 P. 134-LRA 1916 F. 154*, the Court said:

> "The Constitutional provision that taxation shall be uniform applies not only to the levy and assessment of the tax, but its *expenditure and distribution* as well."

In *Morton Salt Co. v. City of So. Hutcherson, 159 F. 2d 897*, the Court said:

> "The test of due process * * * is whether the taxing power exerted by the state laws bears fiscal relation to protection, opportunities and benefits given by the state. In other words what has the state given for which it may ask return * * *? If the tax imposed

which it may ask return * * *? If the tax imposed clearly results in such flagrant and palpable inequality between the burden imposed and the benefit received that it amounts to an *arbitrary taking of property* without compensation it is said to violate the due process guaranty under the Fourteenth Amendment."

Other Citation: *McFarland v. Goins, 50 So. 493.*

Conclusion

WHEREFORE, it is respectfully submitted that this petition for writ of certiorari to review the judgment of the Court below, should be granted, and that upon review, said decision be reversed, and that petitioners have such other relief as may be deemed proper.

Respectfully submitted,

By .....

R. L. H. RICE,
Attorney for Petitioners.

C. B. BUNKLEY, JR.,
U. S. TATE,
Of Counsel.

APPENDIX I.
VERNON'S TEXAS STATUTES
Title 49—Public Education

Article 2695 (2759) Transfers: Each year after the scholastic census of the county is completed, the county superintendent shall, if any district has fewer than twenty pupils of scholastic age, either white or colored, have authority to consolidate said district as to said white or colored schools with other adjoining districts, and to designate the board of Trustees which shall control the white or colored school of such consolidated district.

Article 2696 (2760) Application to transfer: Any child lawfully enrolled in any district or independent district, may by order of the county superintendent, be transferred to the enrollment of any other district or independent district in the same county upon a written application of the parent or guardian or person having lawful control of such child, filed with the county superintendent * * *.

Article 2697 (2761) Transfer to adjoining county: Any child specified in the preceding article, and its portion of the school fund, may be transferred to an adjoining district in another county, in the manner provided in said article. It must be shown to the county superintendent that the school in the district in which such child resides, on account of distance or some uncontrollable and dangerous obstacle, is inaccessible to such child.

Article 2698 Emergency Transfers: In case of conditions resulting from public calamity in any section of the State, such as serious floods, prolonged drouth, or extraordinary border disturbances, resulting after the scholastic census has been taken, in such sudden change of the scholastic population of any county as would work a hardship in the support of the public free schools of the said county, the state apportionment of any child of school age may, on approval of the State Board, be ordered by the State Superintendent to be transferred to any other county or Independent School District in any other county; provided, that the facts warranting such transfer shall be sent to the

State Superintendent by the county or district board of Trustees of schools to which transfer is to be made with a formal request for the said transfer before the first of August of the year in which such unusual conditions occur * * *.

Article 2699 (2762) By agreement of Trustees: Except as herein provided, no part of the school fund apportioned to any district or county shall be transferred to any other district or county; provided that districts lying in two or more counties, and situated on the county line, may be consolidated for the support of one or more schools in such consolidated district; and, in such case, the school funds shall be transferred to the county in which the principal school building for such consolidated district is located; and provided, further, that *all* the children residing in a school district may be transferred to another district, or to an independent district, upon such terms as may be agreed upon by the Trustees of said districts interested.